

Award No. 4126

Docket No. 4048

2-GN-FO-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen & Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, Laborer Kenneth E. Davis, Hillyard Diesel Shop, was improperly removed from his assignment as Classified Laborer (Hostler Helper).

2. That accordingly the Carrier be ordered to restore the Claimant to his former assignment as Classified Laborer (Hostler Helper), and reimburse him for the difference in rate of pay as between Common Laborer and Classified Laborer (Hostler Helper) .408 per hour, eight hours per day for each such work day since March 21, 1960.

EMPLOYEES STATEMENT OF FACTS: Mr. Kenneth E. Davis, hereinafter referred to as the claimant, was first employed by the Great Northern Railway Company, hereinafter referred to as the carrier, as a laborer in the carrier's roundhouse at Hillyard (Spokane), Washington September 29, 1939.

As of May 1, 1954, the facilities of the Hillyard roundhouse, Hillyard shops and the Spokane, Coeue d'Alene and Palouse roundhouse were consolidated, with the claimant assuming the same seniority date on the consolidated roster, claimant was promoted to a position of machinist helper in the roundhouse July 2, 1941 and worked as such most of the time until December 15, 1957 when he was furloughed as a machinist helper and returned to work as a laborer. On February 11, 1958, claimant exercised his seniority as a laborer and placed himself on a position as classified laborer (Hostler Helper). Later in 1958 he forfeited his seniority as a machinist helper to remain on the hostler helper assignment, which he continued to hold until on or about March 21, 1960 when he was notified by letter from Shop Superintendent R. G. Tausch that he had been disqualified as a hostler helper as the result of a four year physical and visual examination, which was given February 8, 1960, and therefore, against his will, was forced to return to work as a laborer.

The dispute was handled with carrier officials designated to handle such affairs, all of whom declined to adjust the dispute.

judgment of the claimant, the organization, this Board or any other outside agency. Those duties and responsibilities are imposed upon the carrier and they must be met by management. Therefore, the carrier cannot and does not wish to delegate to the claimant, the organization, this Board or any other outside agency the function of prescribing, imposing and enforcing minimum standards of physical qualifications for its employes in the interest of safety. Likewise that function cannot be usurped while the responsibilities remain imposed upon the carrier.

The various Divisions of the National Railroad Adjustment Board have repeatedly recognized the responsibility of railroad management to maintain and enforce reasonable minimum physical and visual standards for its employes in the interest of safety. In Third Division Award No. 8394, Signalmen v. I.-G.N., Referee Lloyd H. Bailer, that rule was stated as follows:

“The Carrier is charged with the responsibility of maintaining safe and efficient operation of its facilities. It has a heavy obligation to provide for the safety of its employes and of other persons entrusted to its care. In a matter such as the instant case, this Board should not set aside Management’s judgment unless there is a showing of action that is arbitrary, capricious or evidentiary of bad faith. No such showing is made by the record before us. Thus the claim must be denied.”

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The organization admits that the claim should be withdrawn if the claimant is color-blind.
2. The carrier’s physicians have found the claimant to be color-blind to a degree which makes him an unsafe employe on the position of hostler helper at Hillyard shop.
3. The organization has submitted findings of the claimant’s own medical authority which confirm rather than contradict the fact that he is color-blind.
4. Further examinations of the claimant’s color perception by a neutral doctor could serve no useful purpose, and would be frivolous.
5. The carrier has no obligation to create a special position to fit the physical qualifications of the claimant.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Upon a routine physical examination in 1956, claimant, a Classified Laborer then working as a Machinist Helper, was found to be color blind, which did not disqualify him for that service, or other service to which classified laborers were entitled, including that of Inside Hostler Helper. In 1958 a supervisor unaware of his eyesight deficiency, approved his application for outside Hostler Helper, a position whose rates of pay are covered by the agreement between Carrier and the Brotherhood of Locomotive Firemen and Enginemen, although for other purposes he remained under the Agreement with the Firemen & Oilers Organization.

In 1960 another routine four-year examination again showed his color-blindness because of his failure to identify nine of the sixteen color plates used in the eye tests. The position of outside Hostler Helper involves engine travel with a Hostler over several miles of main line track at Spokane, involving colored signal lights to control engine movements, and including an interlocking plant and crossing of another carrier. He was therefore approved only for work in which recognition of colors was not required, and was accordingly removed from his assignment as outside Hostler Helper, although he is still a Classified Laborer, whose scope of work includes that of Inside Hostler Helper.

The initial ground urged for claimant's restoration to his former position was that only one outside Hostler Helper was needed for main line movements at any one time, that the other outside Hostler Helper could be used for that purpose, and that claimant could be limited to the shop tracks. The claim was denied upon the ground that it was impractical to handle the work on that basis, with two separate classifications for the two outside Hostler Helpers, one of whom could go out on main line tracks and the other could not.

Later in the handling on the property claimant's color-blindness was contested, and the proposal was made for examinations by three doctors "to determine if Mr. Davis is actually color-blind." After rejection of this proposal claimant obtained an examination by an optometrist who certified:

"Mr. Kenneth Davis is color deficient particularly in the red. He has some trouble with mixed colors but not too much with single saturated colors."

As noted above, the carrier's examination found claimant unable to identify nine out of sixteen colors, without stating which nine they were. As the optometrist employed by claimant showed that he was "color deficient particularly in the red," which is the danger signal and certainly the most important color for safety in main line operations, the claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.